

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EBONY W.,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2011061502

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 11, 2011, in Los Angeles.

Ebony W.¹ (claimant) was present and represented herself; she was assisted by her authorized representative, Fernando Alarcon.²

Johanna Arias-Bhatia, Fair Hearing Manager, represented South Central Los Angeles Regional Center (Service Agency or SCLARC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 11, 2011.

¹ Initials and family titles are used to protect claimant's privacy.

² Mr. Alarcon also serves as the Program Coordinator at Solutions Plus Services, Inc., (Solutions Plus), the provider of the services at issue in this matter.

ISSUE

Whether the Service Agency may terminate funding for claimant's supported living services (SLS).

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-8.

Testimony: Natasha Leonard, SCLARC service coordinator; claimant Ebony W.

FACTUAL FINDINGS

1. Claimant is a non-conserved 28-year-old woman, born on March 29, 1983, who is a consumer of SCLARC based on her qualifying diagnosis of mild mental retardation. Claimant lives in her mother's three-bedroom home with seven to ten other people, including her two daughters, ages seven and four, her mother, and her brother; she shares a bedroom with her two daughters and her brother, and she pays rent to her mother. Claimant receives AFDC for her older daughter, and SSI is paid to claimant's mother.

2. Claimant had been living independently with her children and had been receiving Service Agency funding for SLS through Solutions Plus since early 2009. She is able to prepare meals, perform household chores, and take her children on public transportation; she does, however, require money management assistance. At her Individual Program Plan (IPP) triennial review meeting on April 9, 2010, claimant informed the Service Agency that she had moved back to her mother's home and had been living there for three months. Solutions Plus was reportedly helping claimant search for an apartment, though claimant had financial problems with her last independent living arrangement. The IPP noted that:

[e]ffective June 9, 2010, if Solution Plus Services does not have an apartment for [claimant], SCLARC recommended that they convert from SLS services to ILS services, which is a time limited service for 6 months if proven that the services is [sic] needed. The process was explained to the meeting participants and the circle of support agreed.

(Ex. 4.) The IPP states that claimant "will continue receiving 50 hours per month of Supported Living Services via Solution Plus in order to maintain her independent living skills," and that the service coordinator was to monitor claimant's progress quarterly.

The Service Agency agreed to continue funding SLS because, although claimant had run into financial difficulties, she wished again to move into her own home with her two children, and she planned to obtain employment and save money for rent for an apartment.

3. On July 7, 2010, claimant obtained employment at Goodwill Industries of Southern California. Claimant was on probation at her job for several months, earning below minimum wage. Once she successfully completed her probation, she was paid minimum wage and \$1,400 in retroactive wages. According to claimant's agreement with the Service Agency, the retroactive pay was to be used to obtain an apartment. Claimant did not use the money for that purpose, however.

4. As reflected in a March 1, 2011, annual IPP review, claimant continued to receive Service Agency funding for 50 hours per month of SLS services provided by Solutions Plus. She received regional center funding for transportation to and from her job at Goodwill Industries. The IPP annual review noted that claimant had completed an assessment with a parenting skills provider, Birth & Family Service. The Service Agency offered to fund 50 hours per month of parent support services, comprising parenting and living skills instruction, because claimant was no longer living independently. Claimant declined, saying she preferred to remain with Solutions Plus for SLS services. (Ex. 5.)

5. On May 27, 2011, Goodwill Industries terminated claimant's employment.

6. By a Notice of Proposed Action (NOPA) letter dated June 8, 2011, the Service Agency notified claimant that it was terminating funding for her SLS through Solutions Plus, effective July 8, 2011, because:

you are currently residing with your family and have no plan to reside independently in the next six months. SLS is provided by agencies to support adults' efforts to live in their own homes Our records indicate that you have been receiving SLS services since April 10, 2009[;] at that time you were residing independently in your own home. At some point after that period you moved back into your family home making you ineligible for SLS.

(Ex. 1.) The Service Agency noted in its letter that claimant had met with her service coordinator on December 6, 2010, and agreed to save money and tour potential rental properties while the Service Agency continued to fund SLS. But, the letter continued, "you have not followed through with the stated goals. SCLARC has given you're [*sic*] the opportunity to retain your SLS and you have not complied with your side of the agreement, therefore SCLARC cannot continue to fund for SLS." (*Id.*) The Service Agency cited as authority for its decision Welfare and Institutions Code sections 4646, subdivision (a), and

4659, subdivision (c),³ and offered to help claimant apply for In Home Supportive Services. (*Id.*)

7. On June 21, 2011, claimant submitted to SCLARC a Fair Hearing Request, appealing the termination of SLS. She wrote that she had moved back in with her mother but would be moving out and living in a shelter with her daughter. She requested continued assistance from her SLS provider in helping her locate safe housing and in handling her finances.

8. Natasha Leonard, claimant's service coordinator, testified that SLS is provided only to consumers who are living independently. Ms. Leonard testified that claimant had received SLS funding for more than a year since the Service Agency discovered that she was no longer living independently. During that year, the Service Agency attempted to assist claimant in finding housing, obtaining parenting support, and learning money management. But claimant had made no effort to live on her own. Approximately two weeks before the hearing, the Service Agency found housing for claimant at a Fair Housing Administration family home, in which claimant could rent a room for herself and her two daughters with Service Agency funds, allowing claimant to save money for her own apartment.

9. Claimant testified that she is looking for an apartment with the Service Agency's assistance, but that she does not yet have the money for a deposit. She testified that she is interested in the FHA home that the Service Agency suggested, but she would like to see it first; she is willing to share a house with others, but not a room. She testified that she rejected the Service Agency's offer of parenting skills services through Birth and Family Service because she is satisfied with the services provided by Solutions Plus and did not wish to change service providers. Claimant also testified that she is attempting to find work and is attending job fairs.

LEGAL CONCLUSIONS

Jurisdiction and Burden of Proof

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's decision to terminate funding for SLS. Jurisdiction in this case was thus established. (Factual Findings 1-7.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763,

³ All further statutory references are to the California Welfare and Institutions Code, unless otherwise stated.

789, fn. 9.) In this case, the Service Agency bears the burden of proving, by a preponderance of the evidence, that it is entitled to terminate funding for claimant's supported living services. (Evid. Code, § 115.)

Funding for Claimant's SLS

3. The Lanterman Act is a comprehensive statutory scheme to provide "[a]n array of services and supports . . . which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community." (§ 4501.) The services and supports should "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (*Id.*)

4. The services and supports to be provided to a consumer are determined in the IPP process on the basis of the needs and preferences of the consumer and a consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

5. "Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." (§ 4648, subd. (a)(8).) Regional centers are required to identify and pursue all possible sources of funding for consumers receiving regional center services, including SSI. (§ 4659, subd. (a).)

6. The Lanterman Act "places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan." (§ 4689.)

7. Supported living services consist of:

any individually designed service or assessment of the need for service, which assists an individual consumer to:

- (1) Live in his or her own home, with support available as often and for as long as it is needed;
- (2) Make fundamental life decisions, while also supporting and facilitating the consumer in dealing with the consequences of those decisions; building critical and durable relationships with other individuals; choosing where and with whom to live; and controlling the character and appearance of the environment within their home.

(Cal. Code Regs., tit. 17, § 58614, subd. (a).)

8. Supported living services must be tailored to meet the consumer's evolving needs and preferences for support so that the consumer does not have to move from the home of choice and include, but are not limited to, the following services: assistance with common daily living activities such as meal preparation, including planning, shopping, and cooking; performing routine household activities to keep a clean and safe home; locating and scheduling medical services; selecting and moving into a house; acquiring household furnishings; becoming aware of and effectively using the transportation, police, fire, and emergency help available in the community; managing personal financial affairs; recruiting, screening, hiring, training, supervising, and dismissing personal attendants; dealing with governmental agencies; asserting civil and statutory rights through self-advocacy; building and maintaining interpersonal relationships, including a circle of support; participating in community life; and 24-hour emergency assistance. (Cal. Code Regs., tit. 17, § 58614, subd. (b)(1)-(16).) Section 4689, subdivisions (h) and (i), provide that rent payments and household expenses are the responsibility of the consumer, and that a regional center shall not pay for rent or household expenses except in certain circumstances and for no more than six months, "unless the regional center finds that it is necessary to meet the individual consumer's particular needs pursuant to the consumer's individual program plan. The regional center shall review a finding of necessity on a quarterly basis"

9. The Service Agency established by a preponderance of the evidence that it is entitled to terminate claimant's SLS funding. Claimant lived independently for less than one year, during which time she received regional center funding for SLS from Solutions Plus, but she then moved back home with her mother. The Service Agency, nevertheless, continued to provide SLS funding for over one year more, based on an agreement with claimant that she would obtain employment and set aside money from her earnings to make a deposit on an apartment and to pay rent. Claimant did obtain a job, but she did not set aside rent or deposit money from her earnings, and she lost her job after 11 months. Claimant refused the Service Agency's offer of parenting skills training. She has not yet accepted the Service Agency's offer of funding for housing at a family home while she saves money for an apartment. Based on the evidentiary record, it also appears that the Service Agency is willing to fund independent living skills services until claimant is again living on her own. (Factual Findings 1-9.) Until she is again living independently, however, the Service Agency may discontinue its SLS funding.

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ORDER

Claimant's appeal is denied. SCLARC may terminate claimant's SLS funding.

DATED: September 7, 2011

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.